

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:

ROBERT M. HERRIN

Serial No. **10/721,962**

Filing Date: **11/25/2003**

For: **TRAY FORMING APPARATUS**
(As Amended)

Examiner: **Eugene Lee Kim**

Group Art Unit: **3721**

Attorney Docket No.: **7703.26**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

DECLARATION OF JOHNNY MARION THARPE, JR. PE MADE UNDER 35 USC §132

I, Johnny Marion Tharpe, Jr., do hereby declare and say as follows:

1. I am a named inventor of US patent 5,971,906 that has been used as a reference in the above referenced US Utility Patent Application. I am a citizen of the United States of America and a resident of the State of Georgia, residing at 2606 Northgate Road, Albany, Georgia 31721.

2. I received a BSEE degree for the University of Florida in 1976 and began work as an Automatic Controls Engineer for the Procter & Gamble, Company. I received my Florida PE license in 1980; I currently maintain PE license in six states. In 1980 I formed a consulting engineering firm that has provided specialty equipment for a

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wide range of industrial clients. I am currently serving as the Chief Executive Officer, Senior Engineer, and Chairman of the Board for the resulting consulting firm.

3. I am the named inventor of over twenty US patents, and I am familiar with the patent process. My patents cover many diverse areas including; forest products; disposables products; corrugated containers. Claims for both method and apparatus are represented in these various patents; and many of these have met with commercial success.

4. The Examiner has used US Patent No.5,971,906 to Tharpe, Jr. et al. for a "Tray Forming Apparatus" to reject claims in the above referenced pending application. I am very familiar with the disclosure and teachings in both Tharpe '906 and the pending application, and disagree with the Examiner's position expressed in his Office Action dated 10/06/2005, and earlier actions. Specifically, if one remains within the four corners of the '906 patent, there is no disclosure or anticipation of any apparatus that would achieve the results obtained by Mr. Herrin's apparatus as disclosed and claimed in the above referenced application.

5. The Examiner is asked to recognize that though similar in function, the corrugated tray formed by the apparatus of the '906 patent is dramatically different than the tray formed by the apparatus as disclosed in the above referenced pending application. Specifically, the apparatus of the '906 cannot provide the desired forming, folding, and adhesion required to form the tray as disclosed and claimed in the Herrin pending Application.

6. Further, the Examiner is asked to consider some factual differences between the teachings in the Tharpe '906 reference and the teachings in the pending application to better understand why it would not be proper to rely on the teachings of Tharpe '906 for rejecting claims in the pending matter. For example, Tharpe '906 teaches first folding means to fold the end panels up perpendicular to the bottom panel and folding the side panels up to an obtuse angle relative to the bottom panel. The structure disclosed for such forming would not work for the present invention. Specifically, the guide plate (158) called for in the amended Claim 1 does not exist in the Tharpe '906 disclosure, nor would it be suggested because of the need at the time the Tharpe '906 teachings were developed.

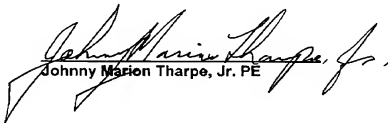
7. It is not obvious to make the many modifications to the apparatus in the Tharpe '906 as suggested by the Examiner so as to achieve the apparatus that forms a tray as disclosed in the above referenced pending application. Contrary to the Examiner's comments in the 10/06/2005 Office Action, it would not be simply a matter of engineering design choice to create a desired fold by making the first arm (228) moveable if element (212) were not moveable. The Examiner states that Tharpe '906 does not disclose whether or not element 228 is movably positioned as claimed in the pending application. However, the Examiner interprets Tharpe '906 showing a second folding arm 412 as being moveable to create folds. It is only through the Herrin disclosure of the present application that one would be guided to make such an observation or conclusion, making modifications as suggested by the Examiner would be extensive, and were not a consideration in the Tharpe '906 matter.

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8. Yet further, in the Tharpe '906 reference, we disclose the application of an adhesive as a shuttle conveys the partially formed blank past adhesive applicators, thereby applying adhesive only to the outer surface of the minor side panels of the blank. Herrin's pending application applies the adhesive to the blank upstream of the platen, and prior to any forming of the blank. There is no motivation or suggestion in '906 for such an arrangement of elements.

9. I hereby declare that all statements made herein of my own accord are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that any such willful false statements may jeopardize the validity of the application or any patent issued thereon.

4/5/6
Date


Johnny Marion Tharpe, Jr. PE